

FILED

OCT - 9 2013

CLERK, U.S. DISTRICT COURT
By _____ Deputy 

KYLE ULMER,

Plaintiff,

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No. 3:13-CV-3254-D

v.

MICHAEL HALL,

Defendant,

)

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. 636(b) and an order of this court, this case has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the United States Magistrate Judge follow:

Factual Background:

Plaintiff Kyle Ulmer is an inmate in the Wayne McCollum Detention Center in Waxachachie, Texas. Defendant Michael Hall was also an inmate at the Wayne McCollum Detention Center. Plaintiff is proceeding *pro se*, and has been granted leave to proceed *in forma pauperis*.

Plaintiff states Defendant assaulted him while they were both inmates. He states Defendant knocked out his front tooth. Plaintiff seeks damages in the amount of \$100.

Discussion:

Federal courts are courts of limited jurisdiction. "They possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). They "must presume that a suit lies outside this limited jurisdiction, and the burden of establishing federal jurisdiction rests on the party seeking the federal forum." *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir.), *cert. denied*, 534 U.S. 993 (2001).

Plaintiff asserts no federal statutory or constitutional basis for his complaint. His claims appear to arise under state law. Federal courts have no jurisdiction over such claims in the absence of diversity jurisdiction under 28 U.S.C. § 1332. Diversity jurisdiction requires that: (1) there is diversity of citizenship between the parties; and (2) the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. The party seeking to invoke federal diversity jurisdiction has the burden to prove that the amount in controversy exceeds \$75,000. *Garcia v. Koch Oil Co. Of Tex.*, 351 F.3d 636, 638-39 (5th Cir. 2003). In this case, Plaintiff states the amount in controversy is \$100. (Magistrate Judge's Questionnaire, Answer No. 2.) Plaintiff has therefore failed to establish diversity jurisdiction.

Courts have a continuing obligation to examine the basis for jurisdiction. *See MCG, Inc. v. Great W. Energy Corp.*, 896 F.2d 170, 173 (5th Cir. 1990). The Court may sua sponte raise the jurisdictional issue at any time. *Id.* Federal Rule of Civil Procedure 12(h)(3) requires that federal courts dismiss an action “[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction over the subject matter.” Because it appears that the Court lacks subject matter jurisdiction, this action should be dismissed.

RECOMMENDATION:

The Court recommends that this case be dismissed for lack of subject matter jurisdiction.

Signed this 9 day of October, 2013.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).* In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996).*